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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,267	10/15/2003	Burns P. Phillips	50243-00001- (5431P003)	9960

23424 7590 07/05/2006

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EXAMINER

JOHNSON, VICKY A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-12, and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Farley et al (US 5,902,233).

Farley et al disclose an assembly comprising: a support (col. 2 lines 47-49), a clamp (55), a retractor shaft (2), a connector (3), a retractor blade (9) and the blade connected to the connector by a stem (31), the stem retained to the shaft by the connector and angularly positionable relative to the shaft axis up and down relative to the shaft axis about a tilting axis (see Figs 5A, 5B, 5C).

The connector allows pivoting of the stem side to side about a rotation axis relative to the shaft axis about a rotation axis (see Fig7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley et al (US 5,902,233).

Farley et al do not disclose the stem angularly positionable intermediate a range of +/- twenty degrees up and down and +/- 60 degrees side to side.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to determine the optimum angular range of the shaft about the tilting axis and the rotation axis, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

Some further comments regarding the applicant's remarks are deemed appropriate.

The applicant argues that the Farley et al reference fails to meet the limitations of the claims because it does not disclose the retractor blade having a third degree of freedom. This may be true, however this limitation is not in the claim.

It is also argued that the Farley et al reference does not teach the device moving up and down. Figures 5A, 5B, and 5C show the device moving up and down.

The applicant's remarks have been accorded due consideration, however, they are not deemed fully persuasive.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6217. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vicky A. Johnson

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6/26/06